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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,631	07/13/2007	Peter Wilhelmus Rietjens	071411-0107	3296
26371 7590 01/14/2009 FOLEY & LARDNER LLP 777 EAST WISCONSIN AVENUE MILWAUKEE, WI 53202-5306				
EXAMINER				
PARADISO, JOHN ROGER				
ART UNIT		PAPER NUMBER		
3721				
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01/14/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/591,631

Applicant(s)

RIETJENS, PETER WILHELMUS

Examiner

John Paradiso

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2006.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-35 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 16-35 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/CI/CD)
Paper No(s)/Mail Date 9/5/06
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 16-21, 24, 26-31, and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by PLAHM ET AL (US 5540035).

PLAHM ET AL discloses a process for packaging goods on a vertical packaging machine (10). A film (F) is formed into a film tube. Sealing jaws (20, 21) apply a cross-seal to the bottom of the tube. Clamping elements (25, 26) fix the tube in a vertical position (see column 7:52-58). Clamping elements (31, 32) also fix the tube in a vertical position (see column 8:9-21).

Regarding claim 18, the film tube is filled with product (P) and the bottom of the bag is expanded due to the weight of the product on the sides of the film tube (see Fig. 1).

Regarding claims 20 and 30, note that the cross seal and the clamping elements 25, 26 are integral (see Fig. 1).

Regarding claim 24, since the product is composed of small items, the density of the product, as a whole, will inherently be changing as they are dropped, moved, and/or vibrated.

Regarding claim 27-29, note that the process is a continuous one, and that the film is dropped before the next load of product is dropped.

Examiner noted that during patent examination of the claims, the pending claims must be given their broadest reasonable interpretation consistent with the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005). *See also* MPEP § 2111. Moreover, while the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, *this is not the mode of claim interpretation to be applied during examination*. During examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). *See also* MPEP § 2111.01.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 23, 25, 33, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over PLAHM ET AL.

PLAHM ET AL discloses a process for packaging goods on a vertical packaging machine, as described above.

PLAHM ET AL does not disclose two packages being produced simultaneously; nor the product being salad.

Regarding claims 23 and 33, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of PLAHM ET AL by making two lines which would produce two packages simultaneously in order to increase the throughput of the machine, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

Regarding claims 25 and 35, it would also have been obvious to one of ordinary skill in the art at the time the invention was made to use the invention of PLAHM ET AL to package salad, in order to increase the variety of packaged items and thus increase consumer appeal.

5. Claims 22 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over PLAHM ET AL as applied to claims 16 and 26 respectively above, and further in view of SAVOURY ET AL (US 6041579)

PLAHM ET AL discloses a process for packaging goods on a vertical packaging machine, as described above.

PLAHM ET AL does recite the known use of formers to form flat webs of film material into film tubes (see column 1:15-42 and 7:34-40) but does not specifically disclose the film tube being made with a longitudinal seal.

SAVOURY ET AL discloses a process for packaging goods on a vertical packaging machine in which a flat film (30) is formed over a forming head (see Fig. 3 and column 3:30-40) and is then sealed longitudinally with a vertical sealer (42) (see column 3:60 - 4:13).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of PLAHM ET AL to use a side sealer, as taught by SAVOURY ET AL, in order to finish the creation of the tube described in PLAHM ET AL in a secure manner.

Reference Citations

6. The following prior art made of record and not relied upon is considered pertinent to Applicant's disclosure:

- BENNETT discloses a system for packaging items in a vertical fill machine in which the product causes the lower end of each package to bulge.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Paradiso. The examiner can normally be reached Monday-Friday, 9:30 p.m. – 6:00 p.m. (ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada, can be reached at the number listed below.

Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Technology Center Receptionist.

/John R Paradiso/

Examiner John Paradiso: (571) 272-4466

January 4, 2009

Additional Phone Numbers:

Supervisor Rinaldi Rada: (571) 272-4467

Fax (Official): (571) 273-8300

Fax (Direct to Examiner) (571) 273-4466 (Drafts only)